IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.43 OF 1999

The Commissioner of Income Tax ..Applicant

Vs.

Narain K.Agnani ..Respondent

Mr.P.S.Sahadevaa for the Applicant.
Mr.Bharat Gandhi for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 27TH FEBRUARY,2007

P.C.

1. Heard the learned Counsel for the parties.

The above Application was filed seeking reference on

the following substantial question of law:

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in directing the Assessing Officer to allow interest paid on borrowed capital as part of cost if it pertained to the period prior to acquisition and as a revenue expenditure thereafter and in further directing the Assessing Officer to allow interest in both the situation as an allowable deduction?"

2. We have perused the order of the Tribunal

dated 13th July,1998 refusing to refer the same and in

the said order, the Tribunal had observed in

paragraph-2 of its original order, which reads as

under:-

"2. We have heard the parties and considered their rival submissions. Interest paid on borrowed capital is allowable as part of cost if it pertained to the period prior to acquisition and as a revenue expenditure thereafter. In both the situations, it is an allowable deduction. In case the Assessing Officer elects to disallow as part of cost, under explanation (iii) to section 143(1)(a), he has to allow the same as revenue expenditure under explanation (ii) to that section. If there is no material for bifurcation, it cannot be said to be a prima facie case for disallowance more so when a similar claim has been allowed in earlier years. We accordingly delete the disallowance from the prima facie adjustment made by the Assessing Officer and allow the assessee's Appeal."

3. A perusal of the same indicates that the above question of law arises out of a finding of fact. In view thereof, the above application stands dismissed.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**